IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1417 of 2007 (O&M)
Date of Decision: 17.04.2007

National Insurance Company Limited ..Appellant

Vs.

Sadhu Singh & Ors. ..Respondents

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.Paul S.Saini, Advocate,
for the appellant.

Vinod K.Sharma,J.

Present appeal has been filed by the Insurance Company against the award passed by the learned Motor Accident Claims (Tribunal), Narnaul (for short the Tribunal) vide which claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (for short the Act) was allowed and compensation to the tune of Rs.3,50,600/- was awarded in favour of the claimants along with interest at the rate of 7 per cent per annum from the date of the institution of the petition till its realisation.

Learned counsel for the appellant has challenged the finding recorded by the learned Tribunal on issue No.3 primarily on the ground that the driver of the offending vehicle was not holding a valid licence on the date of the accident. It was proved on record that the licence of respondent No.1 i.e. Mukesh Kumar was valid up to 25.11.2004 and the said licence

was issued on 7.3.2003. The accident had occurred on 25.3.2005 and licence was renewed only on 25.8.2005. Learned Tribunal took notice of the insurance policy which was placed on record as Exhibit R.2 and noted the following clause in the said policy:-

> "Any person including insured provided that the person driving holds an effective driving licence (including learner's licence) at the time of accident and is not disqualified from holding or obtaining such a licence with all the required endorsements thereon as per Motor Vehicles Act and the Rules made thereunder for the time being in force to drive the category of Motor Vehicle insured hereunder."

Learned Tribunal thereafter placed reliance on the judgment of this Court in the case of **Ram Phal Vs. Krishna Makkar and others 1989 ACJ 1126,** wherein by relying upon the judgment of Hon'ble Supreme Court in the case of Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan, 1987 ACJ 411 it was held as under:-

> "4....."Section 96 (2) (b) (ii) extends immunity to the insurance company if a breach is committed of the condition excluding driving by a named person or persons or by any person who is not fully licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification. The expression 'breach' is of great significance. The dictionary meaning of 'breach' is 'infringement or violation of a promise or obligation, (See Collins English Dictionary). It is, therefore, abundantly clear

that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is not duly licensed will have to be in charge of the vehicle. The very concept of infringement or violation of the promise that the expression 'breach' carries within itself induces an inference that the violation or infringement on the part of the promisor must be a wilful infringement or violation. If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect how can it be conscientiously, posited that he has committed a breach? It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is 'guilty' of the breach of the promise that the vehicle will be driven by a licensed driver. It must be established by the insurance company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach, the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promiser (the insured) committed a breach of his promise. Not when some mishap occurs by some mischance."

There is not an iota of evidence on the record that the insured owner had ever committed any breach of the promise, rather there is a positive evidence on the record to

show that he handed over the vehicle to a driver who was holding a valid driving licence and he had taken all possible care not to commit any breach of the policy. Counsel for the respondent was unable to controvert the submission made by the counsel for the appellant in which I find force."

Reliance was also placed on the judgment of this Court in the case of **Ramesh Chand alias Ramesh Kumar and another Vs. United India Insurance Co. Ltd. and others 1997 ACJ 1331,** wherein it was held as under:-

"6. I have heard the learned counsel for the parties and have also gone through the record. As already mentioned above, the compensation that has been found due has not been seriously challenged by Mr.Suri. The only ground by which the insurance company was able to escape its liability was that Bhagwan Dass did not hold a driving licence. As mentioned above this shortcoming in the evidence was filled up as the licence Exh. C-1 has been produced and proved in this court. A look at this licence (which is limited for the purpose of driving a tractor) would indicate that it was initially valid from 7.9.1965 to 6.9.1968 and that it was subsequently renewed from 7.1.1982 to 6.1.1985. It is apparent therefore that as the accident had taken place on 4.9.1981, the licence at the time was not a valid one as it had expired. However, in the light of the judgment in *Ram Phal Vs. Krisahan Makkar, 1989 ACJ 1126 (P&H),* Mr. Suri has urged that if the driver at the time of the accident had a valid driving licence or had held one earlier,

the insurance company was liable *ipso facto.* This assertion of the learned counsel is borne out by the judgment cited by him."

Reliance was further placed on the Division Bench Judgment of Hon'ble High Court of Madhya Pradesh in the case of **Oriental Insurance Co. Ltd. Vs. Hira Tripathi and others 2002 ACJ 1400.** Para Nos.7 and 8 of this judgment reproduced as follows"-

"7. Firstly, we are not satisfied by mere production of certificate of the Regional Transport Officer that the insurer has discharged its burden to prove that the driver's licence was expired on the date of accident. Document No.2 filed with the appeal indicates the date of issue of licence to Attar Singh, driver as 30.3.89 and date of expiry as 19.11.2001. Thereafter in the bottom there are certain entries of the different period without mentioning anything further. Those periods are 20.3.1989 to 29.3.1992, 25.5.1996 to 24.5.1998 and 20.11.1998 to 19.11.2001. The entry No.5 of this certificate shows the date of issue to be 30.3.89 and date of expiry to be 19.11.2001, which goes to show that the licence of the driver was issued on 30.3.1989 and has been validated till 19.11.2001. No witness has been examined on behalf of the insurer to show that any disqualification was incurred by the driver. On the contrary, the certificate goes to show that he has been found fit to drive the vehicle from the year 1989 till the year 2001. The Apex Court incase of *Sohan Lal Passi Vs. P.Sesh Reddy,* 1996 ACJ 1044 (SC), has held that:-

"Under section 96 (corresponding to new section 149),

section 96 (2) (b)(ii) should not be interpreted in a technical manner. Sub-section (2) of section 96 only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on face of its operates on the person insured. If the person who has got the vehicles insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has got insured the vehicle with the insurance company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability? ...The Supreme Court held that the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established

> that it was the insured who allowed the vehicle to be driven by a person not duly licensed,then the insurance company cannot repudiate its statutory liability under sub-section (1) of section 96."

In the facts of *Sohan Lal Passi's* case (supra), Supreme court had found that the owner has engaged a licensed driver and had placed the vehicle in his charge. The Apex Court has further observed that while interpreting the contract of insurance, the Tribunals and courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment debtor in respect of the liability in view of sub-section (1) of Section 96 of the Act. The Supreme Court also took note of decision in another case, *Ikashiram Yadav V. Oriental Fire & Genl. Ins. Co. Ltd.,* 1989 ACJ 1078 (SC). It has been observed in para 13 as under:-

> "13.This court in case of *Kashiram Yadav v. Oriental Fire & Genl. Ins. Co. Ltd.,* 1989 ACJ 1078 (SC), reiterated the views expressed in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravandan*, 1987 ACT 411 (SC). While referring to that case it was said:
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> '.... There the facts found were quite different. The

vehicle concerned in that case was undisputedly entrusted to the driver who had a valid licence. In transit the driver stopped the vehicle and went to fetch some snacks from the opposite shop leaving the engine on. The ignition key was at the ignition lock and not in the cabin of the truck. The driver had asked the cleaner to take care of the truck. In fact the driver had left the truck in care of the cleaner. The cleaner meddled with the vehicle and caused the accident. The question arose whether the insured (owner) had committed a breach of the condition incorporated in the certificate of insurance since the cleaner operated the vehicle on the fatal occasion without driving licence. This court expressed the view that it is only when the insured himself entrusted the vehicle to a person who does not hold a driving licence, he could be said to have committed breach of the condition of the policy. It must be established by the insurance company that the breach is on the part of the insured. Unless the insured is at fault and is guilty of a breach of the condition, the insurer cannot escape from the obligation to indemnify the insured. It was also observed that when the insured has done everything within his power inasmuch as he has engaged the licensed driver and has placed the vehicle in his charge with the express or implied mandate to drive himself, it cannot be said that the insured is guilty of any

breach.

We affirm and reiterate the statement of law laid down in the above case. We may also state that without the knowledge of the insured, if by driver's acts or omission others meddle with the vehicle and cause an accident, the insurer would be liable to indemnify the insured. The insurer in such a case cannot take the defence of a breach of the condition in the certificate of insurance.

We are in respectful agreement with the view expressed in the case of *Skandia Insurance Co. Ltd. v. Kokilaben Chandravandan (supra)*."

8. Thus, each and every violation or infringement on the part of the insured cannot absolve the insurer from liability. In the present case, in the facts and circumstances, we find that the driver was having licence from the year 1989, it was renewed time and again and after the date of accident also it has been renewed. Thus, it is not the case of the insurer that the non-renewal of the driving licence of the driver was to the knowledge of insured. In the instant case, on facts we find that insured had taken care to appoint a duly licensed driver for driving the vehicle. Thus, the insurer cannot escape the liability particularly when driver has not been disqualified as licence has been renewed."

Learned counsel for the appellant challenged the finding of

learned Tribunal on issue No.3 by placing reliance on the judgment of this Court in **Beer Singh and others Vs. Satbir Singh and another 2000 ACJ 681** to contend that once it was proved on record that the driver was not holding a valid licence on the date of the accident no liability can be fastened on the Insurance Company. Paras No.10 and 11 of the said judgment on which reliance was placed read as under:-

> "10. In the present case, it cannot be said that the word 'or' has to be read as 'and'. It is clear from provisions of sub-section (2) (a) (ii) of Section 149 that if there is a condition in the insurance policy that only a licensed driver is to drive the vehicle, the insurance company would not be liable in case there is a breach. This had nothing to do with the other part that the person has been disqualified for holding a driving licence during the period of disqualification. Both are independent of each other. The disqualification for holding a licence during the period of disqualification is independent of not having a licence.
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> 11. Under the provisions of *Motor Vehicles Act, 1988*, under section 19, the licensing authority after giving the holder of the licence an opportunity of being heard with respect to the grounds contemplated under sub-section (1) of section 19, can disqualify that person for holding or obtaining any driving licence for a specified period. It can revoke the licence. It can keep the driving licence during the period of disqualification. Similarly, under section 20 of the *Motor vehicles Act, 1988* when a person is convicted for certain offences mentioned

under the provisions of section 20 of the said Act, the court may disqualify the person from driving the vehicle of any specific class or otherwise. Similar are the provisions of section 21 and 22 of the said Act. Section 23 of the *Motor Vehicles Act, 1988 reads:*

> *"23.* Effect of disqualification order.--
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> (1) A person in respect of whom any disqualification order is made under section 19 or section 20 shall be debarred to the extent and for the period specified in such order from holding or obtaining a driving licence and the driving licence, if any, held by such person at the date of the order shall cease to be effective to such extent and during such period.
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> (2) The operation of a disqualification order made under section 20 shall not be suspended or postponed while an appeal is pending against such order or against the conviction as a result of which such order is made,unless the appellate court so directs.
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> (3) Any person in respect of whom any disqualification order has been made may at any time after the expiry of six months from the date of the order apply to the court or other authority by which the order was made,to remove the disqualification; and the court or authority as the case may be, may, having regard to all the circumstances, either cancel or vary the disqualification order:

> Provided that where the court or other authority refuses to cancel or vary any disqualification order under this section, a second application thereunder shall not be entertained before the expiry of a period of three months from the date of such refusal.
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> It is abundantly clear from aforesaid that a licence can be suspended and a person can be disqualified for driving a vehicle of a particular class for a specific period. It is obviously clear from perusal of sections 19 to 23 that the period of disqualification and the order to that effect are independent of the condition in the insurance policy that a person shall not drive the vehicle if he is not holding the licence. Thus expression 'or' cannot be read as 'and'."

I have considered the arguments raised by the learned counsel for the appellant and find no force in the same. In the case of **Beer Singh and others Vs. Satbir Singh and another (supra)** this court was considering the stipulation in the insurance policy and has rejected the plea that word 'or' could not be read as 'and' as was sought to be pleaded. However, in the present case, the clause of insurance policy was clear that in order to absolve the insurance company it was to be proved on record that any person including insurer provided that the person driving the vehicle holds an effective driving licence (including learner's licence) at the time of accident and further is not disqualified from holding or obtaining such a licence with all the required endorsements thereon as per Motor

Vehicles Act and the Rules made thereunder for the time being in force to drive the category of Motor Vehicle insured hereunder. So the word used in the clause of the insurance policy was 'and' and therefore, interpretation given by the learned Tribunal cannot be challenged by placing reliance on the judgment of this court in the case **Beer Singh and others Vs. Satbir Singh and another (supra).** The impugned judgment cannot be said to be suffering from any illegality.

No merit. Dismissed.

April 17,2007 **(Vinod K.Sharma)**
rp **Judge**